

## Message Text

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ORIGIN EB-11

INFO OCT-01 EUR-25 ISO-00 CAB-09 CIAE-00 COME-00 DODE-00

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R 191900Z AUG 74

FM SECSTATE WASHDC

TO AMEMBASSY OTTAWA

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E.O. 11652: N/A

TAGS: ETRN, CAB

SUBJECT: CIVAIR - NONSCHEDULED AIR SERVICES

REF : OTTAWA 2488

1. DEPT AGREES EMBASSY SHOULD PURSUE SUBJECT OF NON-  
DESIGNATED AIRLINES. HOWEVER, WE BELIEVE THAT APPROACH  
TO EXTAFF MAY BE IN ORDER SINCE PREVIOUS INFORMAL  
APPROACHES BY EMBASSY AND CAB TO ATC HAVE PRODUCED AN  
APPARENTLY UNCOMPROMISING BUREAUCRATIC ATTITUDE.  
FOLLOWING TEXT OF NOTE SHOULD BE DELIVERED EXTAFF AND  
USED AS BASIS FOR DISCUSSION WITH ATC:

BEGIN TEXT: IT HAS COME TO THE ATTENTION OF THE U.S.  
AUTHORITIES THAT THE CANADIAN AIR TRANSPORT COMMITTEE  
PROPOSES NOT TO CONSIDER APPLICATIONS BY UNITED STATES  
ENTITIES TO CONDUCT NONSCHEDULED FLIGHTS BETWEEN THE  
U.S. AND CANADA AFTER OCTOBER 15, 1974, UNLESS SUCH  
ENTITIES ARE DESIGNATED BY THE U.S. UNDER THE NONSCHEDULED  
AIR SERVICE AGREEMENT.

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THE U.S. HAS ALREADY DESIGNATED A NUMBER OF AIRLINES UNDER THE AGREEMENT AND WILL DESIGNATE ADDITIONAL AIRLINES, PARTICULARLY THOSE OPERATING SMALL AIRCRAFT. THESE AIRLINES ARE ALL COMMERCIAL ENTERPRISES ENGAGED IN COMMON CARRIAGE AND HOLDING APPROPRIATE ECONOMIC

AUTHORITY FROM THE CIVIL AERONAUTICS BOARD. THERE ARE, HOWEVER, OTHER U.S. ENTITIES WHICH ARE NOT REGARDED UNDER U.S. LAW AS BEING ENGAGED IN COMMON CARRIAGE AND WHOSE OPERATIONS SHOULD NOT, IN THE U.S. VIEW BE REGARDED AS FALLING UNDER THE NONSCHEDULED AIR SERVICE AGREEMENT. IN ADDITION, THERE MAY BE INSTANCES IN WHICH U.S. COMMON CARRIAGE AIRLINES, NOT DESIGNATED UNDER THE AGREEMENT, MAY WISH TO OPERATE OCCASIONAL TRANSBORDER CHARTER FLIGHTS.

THE TWO PRINCIPAL CATEGORIES OF NON-COMMON CARRIAGE ENTITIES ARE PRIVATE CONTRACT OPERATORS (ALTHOUGH THESE ARE REFERRED TO IN FEDERAL AVIATION ADMINISTRATION REGULATIONS AS "COMMERCIAL" OPERATORS) AND TRAVEL CLUBS. CONTRACT OPERATORS ARE COMPANIES OWNING AIRCRAFT AND CONTRACTING THEIR SERVICES TO ONE OR A VERY LIMITED NUMBER OF OTHER ENTERPRISES FOR THE CARRIAGE OF PROPERTY OR PASSENGERS. THESE COMPANIES MUST OBTAIN AUTHORITY FROM THE FEDERAL AVIATION ADMINISTRATION, KNOWN AS A PART 121 AUTHORIZATION, BUT BECAUSE THEY DO NOT HOLD THEMSELVES OUT TO THE PUBLIC AS COMMON CARRIERS, THEY DO NOT FALL WITHIN THE JURISDICTION OF THE CAB. TRAVEL CLUBS ARE ENTERPRISES IN WHICH THE OWNERS JOINTLY OWN ONE OR MORE AIRCRAFT WHICH THEY USE FOR THEIR PERSONAL PLEASURE. SUCH AIRCRAFT MUST HOLD A PART 123 AUTHORIZATION FROM THE FAA, BUT BEING PRIVATE FLIGHTS DO NOT FALL WITHIN THE JURISDICTION OF THE CAB.

U.S.-CANADA FLIGHTS BY THESE TWO CATEGORIES OF U.S. ENTITIES WERE PREVIOUSLY HANDLED BY THE ATC BY BEING PLACED ON ITS ELIGIBLE LIST FOR TRANSBORDER OPERATIONS. AS OF JANUARY 1974, THERE APPEAR TO HAVE BEEN 38 COMMERCIAL OPERATORS AND 8 TRAVEL CLUBS ON THE ATC'S ELIGIBLE LIST. THE VAST MAJORITY OF THEIR OPERATIONS LIMITED OFFICIAL USE

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ARE BELIEVED TO ORIGINATE IN THE UNITED STATES FOR THE TRANSPORT OF GOODS OR PEOPLE TO CANADA.

THE UNITED STATES DID NOT ENVISION, AND SO STATED ON SEVERAL OCCASIONS DURING THE NEGOTIATIONS, THAT THE ENTITIES DISCUSSED ABOVE WERE INTENDED TO BE COVERED BY THE NONSCHEDULED AIR SERVICE AGREEMENT. PARAGRAPH TWO OF ARTICLE II OF THE AGREEMENT WAS INCLUDED FOR

THE SPECIFIC PURPOSE OF PRECLUDING DISRUPTIONS OF OPERATIONS NOT COVERED BY THE AGREEMENT. THE USG THEREFORE PROPOSES THAT THE CANADIAN AUTHORITIES NOT REQUIRE THE DESIGNATION OF SUCH ENTITIES UNDER THE AGREEMENT AND INSTEAD CONTINUE TO ALLOW THEIR AIRCRAFT OPERATIONS IN A MANNER CONSISTENT WITH PAST PRACTICE. TO DO OTHERWISE COULD PRODUCE ADVERSE ECONOMIC EFFECTS, PARTICULARLY ON THE AUTOMOTIVE INDUSTRIES OF BOTH COUNTRIES WHICH DEPEND ON AIR TRANSPORT OF PARTS ON SHORT NOTICE.

WITH REGARD TO COMMON CARRIAGE AIRLINES, THE U.S. HAS DESIGNATED, OR INTENDS TO DESIGNATE, ALL AIRLINES HOLDING THE REQUISITE U.S. AUTHORITY AND EXPRESSING AN INTEREST IN TRANSBORDER CHARTERS. HOWEVER, OCCASIONS MAY ARISE WHERE A NON-DESIGNATED AIRLINE WISHES TO OPERATE AN ISOLATED CHARTER FLIGHT. FOR EXAMPLE, ALL U.S. SCHEDULED AIRLINES HOLD STATUTORY WORLDWIDE CHARTER OPERATING AUTHORITY SUBJECT TO LIMITATIONS, AND SOME OF THEM MAY HAVE TO OPERATE INFREQUENT AND ISOLATED TRANSBORDER CHARTER FLIGHTS. ALSO, SUPPLEMENTAL CARRIERS NOT HOLDING SPECIFIC U.S. AUTHORITY TO OPERATE BETWEEN THE U.S. AND CANADA MAY ON OCCASION AND FOR EMERGENCIES BE GRANTED SPECIAL AUTHORITY (EXEMPTING THEM FROM THE REQUIREMENT TO OBTAIN AN AMENDED CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY) TO OPERATE SPECIFICALLY IDENTIFIED TRANSBORDER CHARTER FLIGHTS. IT WOULD SEEM DESIRABLE THAT PROCEDURES EXIST FOR THE ATC TO CONSIDER OCCASIONAL FLIGHTS IN THESE AREAS, WITHOUT ENCUMBERING THE AGREEMENT WITH A PROLIFERATION OF DESIGNATIONS, OR THE CARRIERS WITH THE LICENSING BURDEN FOR ONLY A FEW FLIGHTS.

IF THIS PROPOSAL PRESENTS PROCEDURAL DIFFICULTIES FOR LIMITED OFFICIAL USE

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THE CANADIAN AUTHORITIES, THE U.S. AUTHORITIES WOULD BE PLEASED TO DISCUSS WAYS TO REMOVE THESE DIFFICULTIES ON A PRACTICAL BASIS. THE USG URGES, HOWEVER, THAT THE ATC NOT TAKE THE PRECIPITOUS STEP OF REFUSING TO CONSIDER APPLICATIONS BY CONTRACT OPERATORS, TRAVEL CLUBS AND NON-DESIGNATED OCCASIONAL CHARTER OPERATORS UNLESS DESIGNATED BY THE USG UNDER THE AGREEMENT AND FURTHER THAT IT REMOVE ITS DEADLINE FOR SUCH DESIGNATION. END TEXT.

2. ATC MAY RAISE QUESTION HOW IT IS EXPECTED KNOW WHETHER AN APPLICANT PROFESSING TO BE A CONTRACT OPERATOR OR TRAVEL CLUB IS NOT ACTUALLY AN AIRLINE ENGAGED IN COMMON CARRIAGE WHICH SHOULD BE DESIGNATED. ATC REGULATIONS ALREADY REQUIRE DOCUMENTARY EVIDENCE

OF AN ENTITY'S HOME COUNTRY AUTHORITY FOR PLACEMENT  
ON ITS ELIGIBLE LIST. A CONTRACT CARRIER HAS  
PRESUMABLY BEEN REQUIRED TO FURNISH A COPY OF HIS  
PART 121 COMMERCIAL OPERATING CERTIFICATE; A  
TRAVEL CLUB ITS PART 123 AIR TRAVEL CLUB OPERATING  
CERTIFICATE. IF QUESTIONS STILL REMAIN, AN ACCEPTABLE  
PROCEDURAL WOULD BE FOR ATC ASK EMBASSY WHICH WOULD  
CONFIRM STATUS THROUGH DEPT.

3. ATC MAY ALSO RAISE OBJECTIONS AGAINST SCHEDULED  
AND SUPPLEMENTAL CARRIERS ENGAGED IN OCCASIONAL FLIGHT  
WITHOUT BEING DESIGNATED. IF SUCH FLIGHTS BY ANY ONE  
AIRLINE EXCEED MORE THAN A HANDFUL PER YEAR, GOC COULD  
BE JUSTIFIED IN CUTTING-OFF THE AIRLINE UNLESS IT  
WERE DESIGNATED. ALTERNATIVE OF DESIGNATING ALL  
SCHEDULED AND SUPPLEMENTAL CARRIERS WOULD APPEAR TO  
US CUMBERSOME AND IMPRACTICAL IN VIEW LOW FREQUENCY  
OF THEIR TRANSBORDER OPERATIONS. KISSINGER

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**Disposition Approved on Date:**  
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**Disposition Case Number:** n/a  
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